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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket
)	
RIVERTOWN COMMUNICATIONS CO. INC.)	File No. BPH-911008ME
)	
SAMPLE BROADCASTING COMPANY, L.P.)	File No. BPH-911010MA
)	
For Construction Permit)	
for a new FM Station on)	
Channel 282C3 in Eldon, Iowa)	
To: Administrative Law Judge		
John M. Frysiak		

92-3161

OPPOSITION TO MOTION TO ENLARGE ISSUES

Sample Broadcasting Company, L.P. ("Sample"), by its attorney, respectfully opposes the Motion to Enlarge Issues filed by Rivertown Communications Company, Inc. ("Rivertown") on October 4, 1993. In support thereof, the following is shown.

Rivertown's Motion seeks an issue whether Sample's amendment filed September 17, 1993, misrepresented facts surrounding the termination of Carmela Sample-Day's employment at FM Station KKSI Eddyville, Iowa. Sample's petition for leave to amend states that Ms. Sample-Day was laid off from her employment due to the downsizing of station staff and the elimination of the full-time news department.

As a threshold matter, Rivertown must submit "specific allegations of fact sufficient to show ... that a grant of the application would be prima facie inconsistent with [the public interest, convenience and necessity]." 47 U.S.C. Section 309 (d) (1); Astroline Communications Co. Ltd. Partnership v. FCC,

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857 F. 2d 1556 (D.C. Cir 1988). Allegations must be supported by the affidavit of a person with personal knowledge of the facts alleged. 47 U.S.C. Section 309 (d)(1) In Ramon Rodriguez and Associates, Inc., 7 FCC Rcd 2633, paragraph 8, (1992) the Commission held that affidavits based on hearsay may be rejected.

To meet such requirement, Rivertown's petition includes the affidavit of David Brown, a principal of Rivertown, and Michael Crumb, an employee supervised by David Brown at Station KKMI Burlington, Iowa. Brown reports that his brother told his mother who told his son who told Brown that Sample-Day had been let go as KKSI's News Director and that Mark Denney was to be the new KKSI News Director. Brown also reports a conversation he had with Mark Denney stating that Denney told him that Sample-Day was terminated because her coverage of an Ottumwa city election on August 17, 1993, was unsatisfactory. There is no indication how Mr. Denney acquired any of the information attributed to him.

Michael Crumb's affidavit reports that he spoke to a (unidentified) female at Station KKSI on September 23, 1993. He said that he was told that the radio station has a full-time news department. Crumb states further that he spoke to Mark Denney who identified himself as the KKSI News Director.

The affidavits provided by Rivertown are not based on the personal knowledge of the affiant. They are mere hearsay which cannot support the truth of the matter asserted therein.

Rivertown relies entirely on these statements as its sole basis to enlarge issues. However, the hearsay reduces Rivertown's petition to unproven speculation which does not support the requisite prima facie showing. Rivertown's affidavits fail to supply the requisite proof required to enlarge issues and should be rejected. Ramon Rodriguez, supra.

The unreliability of hearsay and Rivertown's cavalier approach to its Motion are underscored by the fact that Brown's affidavit focuses partly on an alleged incident relating to news coverage of an Ottumwa city election which occurred on August 17. The most recent Ottumwa city election prior to Ms. Sample-Day's lay-off occurred August 10 of this year. Proof of this is shown by the attached representative sample of polling place results released August 10, 1993, the day of the election. No election occurred in Ottumwa on August 17.

Based on its affidavits, the best that Rivertown can do is speculate at its page four, that Sample-Day's change in employment "is apparently due" to a concern that her discharge would detract from Sample's comparative case. Rivertown has provided absolutely no evidence or statement from anyone with personal knowledge to support its conjecture. Nor has Rivertown shown any Commission law, policy¹ or other reason

¹ Indeed, other than citing Section 1.17 of the rules and a Commission policy statement on forfeitures, Rivertown fails to present or cite one shred of Commission case law or policy to support its Motion.

that Sample should have such a concern or that such a concern on Sample's part would be justified. Allegations of conclusory facts or based on mere information and belief are inadequate to support alleged misrepresentation issues. Bilingual Bicultural Coalition v. FCC, 595 F 2d 621 (DC Cir. 1978).

To sustain a misrepresentation issue, Rivertown must show that Sample-Day knew the statement to be false and had motive to make a false statement. Fox River Broadcasting, Inc., 93 FCC 2d 127 (1983). Rivertown has failed to address this prerequisite.

Ms. Sample-Day's attached statement made under penalty of perjury reports that Bruce Linder, Vice President of KKSI's licensee, informed her that the station was in the process of downsizing and phasing out the position of full time newspaperson. As a result, she was being laid off. Ms. Sample-Day asked Mr. Linder to put the reason for her termination in writing. Mr. Linder complied with this request and provided her with a letter, a copy of which is attached to Sample-Day's affidavit. She relied on her conversation with Bruce Linder and his subsequent letter in preparing her recent amendment.

Sample's amendment provided Sample-Day's understanding of the reasons for her termination. Sample has been completely forthcoming. Moreover, it would achieve no benefit from misrepresenting the reasons for her termination. Rivertown has shown no motive for Sample to mislead the Commission. Moreover, when Rivertown states at page four, "[w]hatever

Sample's motivation", it concedes effectively that it cannot educe a motivation for Sample to have misrepresented the basis for her change in employment status or otherwise mislead the Commission.

Without intent to deceive, there is no basis for the requested issue. Fox River, supra. Sample-Day relied properly on information known to her in submitting an amendment as required by Section 1.65 of the Commission's rules. The information was reported and relied upon in good faith. Well-established Commission precedent requires an extant desire to deceive or mislead in order to find misrepresentation. Muncie Broadcasting Corp., 89 FCC 2d 123, 128 (Rev. Bd. 1982), rev den. 54 RR 2d 42 (1983); Scioto Broadcasters, 5 FCC Rcd 5158 (Rev. Bd. 1990). There is no evidence of deceit or purposeful concealment by Sample.

Clearly, Rivertown's Motion to Enlarge Issues is meritless. Rivertown's allegations are completely speculative, without substance, based on double and even triple hearsay, and do not rise to the showing necessary to sustain addition of an issue, i.e. a prima facie case. It has not provided a statement from anyone with personal knowledge of any fact regarding Sample-Day's termination from KKSI. It failed to show that Sample-Day misrepresented anything to the Commission. It shows no motive or intent for Sample to have misrepresented Sample-Day's termination from KKSI. Instead, it relies on conclusory allegations and unfounded inference,

neither of which supply any valid or recognizable support to Rivertown's Motion.

Accordingly, Rivertown's Petition to Enlarge Issues must be denied.

Out of an abundance of caution, Sample submits the following objections with regard to Rivertown's requested discovery: Rivertown's request for "any documents...relating to any compensation or other payments to Ms. Sample-Day" subsequent to her lay off from KCSI is well beyond the scope of the requested issue. Documents relating to any compensation Sample-Day may receive from any source whatsoever is unrelated to the requested issue. Rivertown has provided absolutely no explanation how any documents relating to compensation are relevant to or reasonably calculated to lead to relevant evidence on the requested misrepresentation issue 47 CFR 1.311.

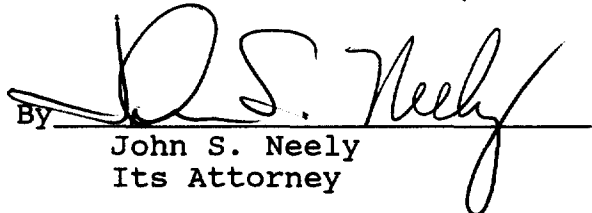
Sample objects to the depositions of Mark Denney, Pat Snyder and Mark McVey. These gentlemen have provided no information on the requested issues and Rivertown has failed to show how their deposition would adduce or lead to relevant evidence on the requested misrepresentation issue. Rivertown has presented no basis to believe that any of these people have any personal knowledge surrounding Ms. Sample-Day's termination from KCSI.

Richard Brown's only link to the requested issue is hearsay filtered through David Brown's son and mother. Mark

Denney has provided no statement and there is no indication how he obtained the information attributed to him. No information was obtained from Mark McVey and there is no showing that he had any part in the termination decision or has any independent knowledge surrounding the relevant facts of Sample's amendment. Clearly, Rivertown seeks authority to conduct a fishing expedition. Should the requested issue be enlarged, Rivertown's attempt at free-wheeling discovery must be quashed and it should be limited to appropriate discovery which may be available under the Commission's rules.

Respectfully submitted,

SAMPLE BROADCASTING CO., L.P.

By 
John S. Neely
Its Attorney

October 18, 1993

Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033

004 OTTUMWA CITY PCT. 4

WAPELLO COUNTY, IOWA
SPECIAL ELECTION AUGUST 10, 1993

Total Number Voting	325	
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CITY OF OTTUMWA - QUESTION A		
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YES	163	50.30%
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NO	161	49.69%
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CITY OF OTTUMWA COUNCILPERSON		
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KEN P. WILLIAMS	143	90.50%
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STATEMENT

I, Carmela Sample-Day, have read the October 4, 1993, Motion to Enlarge Issues filed by Rivertown Communications Company, Inc., against Sample Broadcasting Company, L.P., and would like to make the following response.

As I understand it, Rivertown alleges that in essence I lied to the FCC about the reasons for my termination from radio station KKSJ. The allegation is totally false and I resent such an accusation. The background for the amendment I signed on September 16, 1993 is as follows.

On or about August 17 or 18, 1993, I received a call from Bruce Linder, vice president of the KKSJ licensee. He indicated to me that the station wanted to redesign its operating budget and reduce expenses where possible. He explained that one way the station was trying to accomplish this goal was through some personnel changes and staff reduction including phasing out the full-time news department. Mr. Linder informed me that I would be laid off on August 19, 1993, as a cost saving measure. I did not understand that my lay-off would mean the end of news and public affairs programming at KKSJ. I did not ask how such programming would be handled by the station after my departure;

For my own records, I asked Mr. Linder to write a letter to me explaining why I was being laid off. The attached document is a true and correct copy of the letter dated August 18, 1993, from Mr. Linder which I received in response to my request. Mr. Linder's letter is a correct summary of our discussion. The letter and our discussion was the basis for my amendment to the Commission about my change in employment.

I am very serious in my pursuit of the CP for Eldon. I have been completely candid and truthful with all information I provided to the Commission. I have not misled the Commission about my termination from KKSJ. I have no reason to believe that my amendment is not completely truthful.

I certify under penalty of perjury that this statement is true and correct to the best of my knowledge and belief.

SAMPLE BROADCASTING COMPANY, L.P.

10/16/93
Date

C Sample-Day
Carmela Sample-Day
General Partner

Carmela Sample
Kiss Fm
Ottumwa, IA. 52501

8-18-93

Dear Carmela,

As we have discussed earlier, we are phasing out the position of full-time newsperson at Kiss Fm (O-Town communications) as a cost saving measure.

It is understood that you will have a legitimate claim for unemployment from this company and we have no intention of protesting such a claim.

Sincerely
Bruce Jinder

Vice President
O-Town Communications

CERTIFICATE OF SERVICE

I hereby certify that on this 18 day of October, 1993, a
copy of the foregoing document was placed in the United States mail, first
class postage prepaid, addressed to the following:

Norman Goldstein, Esq.
Mass Media Bureau, Hearing Branch
Federal Communications Commission
Washington, DC 20554

Donald E. Ward, Esq.
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Washington, DC 20004

Robin Green